

STATES OF JERSEY

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DRAFT ELECTRONIC COMMUNICATIONS (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 25th October 2005
by the Economic Development Committee**

STATES GREFFE



Jersey

DRAFT ELECTRONIC COMMUNICATIONS (AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Economic Development Committee has made the following statement –

In the view of the Economic Development Committee the provisions of the Draft Electronic Communications (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy F.G. Voisin of St. Lawrence**

REPORT

The provisions of the Amendment are aimed at creating increased clarity and flexibility in the Electronic Communications Law and, in doing so, facilitate the increased use of electronic communications to and from states entities (a term defined in the Law). The Law has been little used to date, due largely to a presumption, set out in the Electronic Communications (Jersey) Order 2000, that information required to be provided under statute to a states entity may only be provided if the statute in question has been set out in the Order. The effect of the Order has been to reverse the presumption set out in the Law, which is that any information required under statute can be provided unless provided otherwise by Order.

The Amendment will address the confusion by permitting the Economic Development Committee (or its successor), by Order, to stipulate which enactments (or parts of enactments) the provisions of the Law should apply to and, if necessary, set out conditions applicable to the transmission of electronic communications under certain statutes. This will enable the Law to be applied to particular provisions of enactments and to allow flexibility in relation to the acceptance of electronic communications that cannot be accommodated within the structure of the existing Law.

The Draft Amendment has minimal implications for the financial or manpower resources of the States, though any implications likely to result from the increased use of electronic communications will be beneficial.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 20th October 2005 the Economic Development Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Economic Development Committee the provisions of the Draft Electronic Communications (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 of this Law amends Article 10 of the Electronic Communications (Jersey) Law 2000.

The current provision specifies that the provisions of Part 3 of the Law will apply to all enactments except to those enactments, provisions or classes of enactments which are specified by the Committee by Order to be provisions or enactments to which the provisions of Part 3 will not apply, or will only apply if certain requirements or conditions are met.

Article 10(1), as proposed by this amendment to be substituted, will partially reverse this position. Under the amended provision, Articles 10 and 14 to 18 of Part 3 of the Law will apply to all enactments, while Articles 11, 12 and 13 will only apply to an enactment, a provision of an enactment, or a class of enactments, if the enactment, provision or class –

- (a) is specified in an Order made by the Committee to be an enactment, provision or class of enactments to which Article 11, 12 or 13, as the case may be, will apply; or
- (b) is specified in an Order made by the Committee to be an enactment, provision or class of enactments to which Article 11, 12 or 13, as the case may be, will apply if requirements or conditions specified in the Order are fulfilled.

Proposed paragraph (2A) of Article 10 states that such an Order may include a requirement that where a provision of an enactment requires or permits information, a signature or a document to be given to a States entity, the information, signature or document may only be given by means of an electronic communication with the consent of the States entity or a person acting on behalf of the States entity. That consent may be conditional and may be given in relation to particular information or a particular signature or document, or in relation to information, signatures or documents generally.

Article 2 specifies that the Law will come into force 28 days after it is registered in the Royal Court.



Jersey

DRAFT ELECTRONIC COMMUNICATIONS (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend the Electronic Communications (Jersey) Law 2000.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Article 10 amended

Article 10 of the Electronic Communications (Jersey) Law 2000^[1] is amended by substituting for paragraph (1) the following paragraphs –

- “(1) The Committee may by Order provide that Article 11, 12 or 13 –
 - (a) shall only apply to an enactment, a provision of an enactment, or a class of enactments, that is or are specified in the Order; or
 - (b) shall only apply to an enactment, a provision of an enactment or a class of enactments, that is or are specified in the Order –
 - (i) if a specified condition or requirement is complied with, or
 - (ii) in specified circumstances.
- (2A) The power to specify a requirement in an Order under paragraph (1)(b)(i) includes the power to specify that, where an enactment, a provision of an enactment, or a class of enactments, requires or permits information, a signature or a document to be given to a States entity –
 - (a) the information, signature or document may only be given by means of an electronic communication with the consent of the States entity or a person acting on behalf of the States entity; and
 - (b) the consent for the purposes of sub-paragraph (a) may be conditional and may be given in relation to particular information or a particular signature or document or to information, signatures or documents in general.”.

2 Citation and commencement

- (1) This Law may be cited as the Electronic Communications (Amendment) (Jersey) Law 200-.
- (2) This Law shall come into force 28 days after it is registered in the Royal Court.

[1] Chapter 04.280.